



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,680	01/29/2001	Nils B. Lahr	39564A	5435
22206	7590	11/15/2004	EXAMINER (SMAIL, SHAWKI SAIF)	
FELLERS SNIDER BLANKENSHIP BAILEY & TIPPENS THE KENNEDY BUILDING 321 SOUTH BOSTON SUITE 800 TULSA, OK 74103-3318			ART UNIT 2155	PAPER NUMBER
DATE MAILED: 11/15/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/770,680	LAHR, NILS B.	
	Examiner Shawki S Ismail	Art Unit 2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on August 26, 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

1. This communication is responsive to the amendment received on August 26, 2004. Claim 13 has been newly added. Claims 1-13 are pending examination.

### ***Claim Rejections - 35 USC §102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1-13 are rejected under 35 U.S.C. 102(e) as being anticipated by

**Markowitz et al. (Markowitz), U.S. Patent No. 6,484,212.**

4. As to claim 1, Markowitz teaches a system, adapted for use with a distributed data delivery network, for duplicating data being distributed in the network, comprising:

a data storage (media storage device 116); and

a data distributor (media server 135), adapted to distribute data as streaming data at a first bitrate to at least one data server in the network (col. 3,

lines 34-40, the media server 135 streams the version of the media information to the user device), while writing said data to said data storage at substantially said first bitrate (col. 3, lines 57-59, versions of the media information is stored at a media storage device.)

5. As to claim 2, Markowitz teaches a system as claimed in claim 1, wherein: said data distributor comprises an encoder (col. 3, lines 4-11, media server encodes the media information into multiple versions), adapted to encode said data to create said streaming data at said first bitrate.

6. As to claim 3, Markowitz teaches a system as claimed in claim 1, wherein: said data storage includes a disk, and said data distributor is adapted to write said data to said disk at substantially said first bitrate (col. 6, lines 12-17.)

7. As to claim 4, Markowitz teaches a system as claimed in claim 1, wherein: said data storage is disposed at a data server in said network (fig. 1, media storage device is disposed at a media server in the network.)

8. As to claim 5, Markowitz teaches a system as claimed in claim 1, wherein: said data storage is disposed at one of said at least one data server in said network (fig. 1, media storage device is disposed at a media server in the network.)

9. As to claim 6, Markowitz teaches a system as claimed in claim 1, further comprising:

a reader, adapted to read said data stored at said data storage at a read rate substantially equal to said first bitrate (gateway proxy device 115, col. 3,

lines 15-27, reads the information in the data storage and streams it to the user device.)

10. As to claim 7, Markowitz teaches a method for duplicating data being distributed in a distributed data delivery network, comprising:

distributing data as streaming data at a first bitrate to at least one data server in the network (col. 3, lines 34-40, the media server 135 streams the version of the media information to the user device); and

writing said data to a data storage at substantially said first bitrate while performing said distributing step (col. 3, lines 57-59, versions of the media information is stored at a media storage device.)

11. As to claim 8, Markowitz teaches a method as claimed in claim 7, wherein:

said data distributing step includes encoding said data to create said streaming data at said first bitrate (col. 3, lines 4-11, media server encodes the media information into multiple versions.)

12. As to claim 9, Markowitz teaches a method as claimed in claim 7, wherein:

said data storage includes a disk; and said data distributing step includes writing said data to said disk at substantially said first bitrate (col. 6, lines 12-17.)

13. As to claim 10, Markowitz teaches a method as claimed in claim 7, wherein:

said data storage is disposed at a data server in said network (fig. 1, media storage device is disposed at a media server in the network); and

said writing step writes said data to said data storage disposed at said data server (col. 3, lines 57-59, versions of the media information is stored at a media storage device.)

14. As to claim 11, Markowitz teaches a method as claimed in claim 7, wherein:

    said data storage is disposed at one of said at least one data server in said network (fig. 1, media storage device is disposed at a media server in the network);

    said writing step writes said data to said data storage disposed at said one of said at least one data server (col. 3, lines 57-59, versions of the media information is stored at a media storage device.)

15. As to claim 12, Markowitz teaches a method as claimed in claim 7, further comprising:

    reading said data stored at said data storage at a read rate substantially equal to said first bitrate (gateway proxy device 115, col. 3, lines 15-27, reads the information in the data storage and streams it to the user device.)

16. As to claim 13, Markowitz teaches a system comprising:

    a distributed data delivery network (col. 1, lines 31-32, streaming media information via at least one network; and

    means for delivery of streaming data at a first bitrate to at least one data server in the network, while writing said data to a data storage device at substantially said first bitrate, wherein said at least one data storage device comprises said data storage device (col. 1, lines 31-61, the largest bandwidth

that does not exceed the bandwidth of the user device connection, is streamed to the user device. Since the user bandwidth is always greater or equals the media server bandwidth, the bitrate in which the data streamed to the client is equals to the bitrate in which the data is being written to the client.)

### ***Response to arguments***

17. Applicant's arguments filed have been fully considered but they are not persuasive.

In the remarks, the applicant argues in substance that Markowitz particularly fails to show the claimed limitations of writing the streaming data to data storage of the delivery network while the streaming data is being distributed to at least one server of the delivery network; and that the streaming data is being written to the data storage at substantially the same bitrate as the streaming data is being delivered to the server.

Markowitz teaches a proxy apparatus and method for streaming media information via at least one network. A user device communicates with the proxy apparatus using a particular bandwidth and requests that media information is provided from a media server (see abstract). Markowitz further teaches using the largest bandwidth that does not exceed the bandwidth of the user device connection, is streamed to the user device. Since the user bandwidth is always greater or equals the media server bandwidth, the bitrate in which the data streamed to the client is equals to the bitrate in which the data is being written to the client. The claim does not specifically state that the data server and the storage device are two separate entities and therefore the media server

Art Unit: 2155

streaming data to the client device meets the scope of the claimed limitation "a data distributor, adapted to distribute data as streaming data at a first bitrate to at least one data server in the network, while writing said data to said data storage at substantially said first bitrate".

**18. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawki S Ismail whose telephone number is 571-272-3985. The examiner can normally be reached on M-F 8:30 - 5:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on 571-272-3978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2155

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shawki Ismail  
Patent Examiner  
November 10, 2004

AI

*Hosain Alam*  
HOSAIN ALAM  
SUPERVISORY PATENT EXAMINER